

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Implementation of Sections 11)
and 13 of the Cable Television)
Consumer Protection and)
Competition Act of 1992)
)
Horizontal and Vertical Ownership)
Limits, Cross-Ownership Limitations)
and Anti-Trafficking Provisions)

MM Docket No. 92-264

To: The Commission

PETITION FOR CLARIFICATION OR RECONSIDERATION

Oklahoma Western Telephone Company ("Oklahoma Western"), by its attorneys, hereby petitions the Commission for clarification or reconsideration of its Report and Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding^{1/} to the extent it adopted grandfathering rules for cable/MMDS cross-ownership interests. While, as discussed below, the Commission's new grandfathering rules require revision, under either those rules or the revision proposed herein, Oklahoma Western's cable/MMDS cross-ownership interests are grandfathered.

Oklahoma Western is an independent telephone company which provides telephone service in rural eastern Oklahoma. On December 23, 1988, Oklahoma Western received FCC authorization to construct a system to provide Multichannel Multipoint Distribution Service ("MMDS") to subscribers in the Clayton, Oklahoma

^{1/} FCC 93-332, released July 23, 1993 ("Report and Order").

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In response to the statutory directive to the Commission to grandfather existing cable/MMDS cross-ownership interests, the Commission stated that it would merely leave in place its existing grandfathering provision, which it had adopted when it adopted its cable/MMDS cross-ownership rules in 1990. Report and Order at ¶ 93. Thus, under the newly-adopted rules, existing Section 21.912(f) of the Commission's Rules, 47 C.F.R. § 21.912(f), will become Section 21.912(e). The rule will continue to provide that: "Applications filed by cable television companies, or affiliates, for MDS channels prior to February 8, 1990, will not be subject to the [cable/MMDS cross-ownership prohibition]" Assuming, arguendo, that the 1992 Cable Act and the Commission's Rules also apply to the holder of an MMDS authorization which acquires a cable authorization, Oklahoma Western's ownership of its cable television and MMDS interests is grandfathered because Oklahoma Western's MMDS application (which was filed in 1983) was granted in 1988 and it received its cable franchise in 1989^{9/} -- both dates well before the February 8, 1990 date cited in the Report and Order and in the old and new rules.

Paragraph 93 of the Report and Order also states that the Commission will not grandfather "additional cable/MMDS combinations" (i.e., those created as a

^{9/} Normally an entity does not need to apply to the FCC to construct and operate a cable television system, and therefore the date it receives its local franchise should be the date on which its cable "interest" is created for grandfathering purposes. The rule should be no different for telephone companies such as Oklahoma Western even though, pursuant to 47 U.S.C. § 214, a telephone company must submit an application to the FCC for authority to construct and operate a cable television system in its telephone service area ("214 application"). Oklahoma Western submitted its 214 application to the FCC on June 28, 1990. The application was granted and effective on July 24, 1992. See supra note 3. Even if Oklahoma Western's cable "interest" did not come into being until July 24, 1992, when its 214 application was granted, Section 11 of the 1992 Cable Act directs the Commission to waive the cross-ownership prohibition for interests which existed before the enactment date of the 1992 Cable Act, October 5, 1992. By that date, there is no question that Oklahoma Western's cable "interest" (i.e., both its local franchise grant and its FCC authorization) was in existence and was subject to the grandfathering provisions of the 1992 Cable Act.

consequence of MMDS applications filed by cable companies after February 8, 1990), even though Section 11 of the 1992 Cable Act mandates the grandfathering of all cable/MMDS cross-ownership interests in existence on the date of enactment of the Act, over two years after February 8, 1990. Apparently the Commission believes that no "additional" cable/MMDS combinations could have come into existence as a consequence of MMDS applications filed after February 8, 1990, because, it assumes, after that date cable systems could no longer file MMDS applications. This assumption is incorrect, and the resulting grandfathering rules require clarification or reconsideration.

The Commission's 1990 rules prohibiting cable/MMDS cross-ownership included exceptions for cable systems in rural areas^{7/} and for cable systems in areas where there is another provider of cable television service.^{8/} Therefore, contrary to the assumption upon which the new cable/MMDS cross-ownership grandfathering rules are premised, pursuant to either the rural or the overbuild exception, a cable system could have obtained a license from the FCC to provide MMDS even if its application was filed after February 8, 1990. And, under the 1992 Cable Act, the resulting cable/MMDS cross-ownership interests must be grandfathered if they were in existence prior to the date of enactment of the cross-ownership provisions of the Act.

The Commission should clarify that any such cable/MMDS cross-ownership interests -- those which came into existence as a result of permissible applications filed after February 8, 1990 but prior to the enactment of the 1992 Cable Act -- are also grandfathered under Section 11 of the 1992 Cable Act and under the Commission's new cable/MMDS cross-ownership rules. Accordingly, Oklahoma

^{7/} 47 C.F.R. § 21.912(d).

^{8/} 47 C.F.R. § 21.912(a).

Western recommends the following change (indicated by underlining) in new Section 21.912(e) of the Commission's Rules:

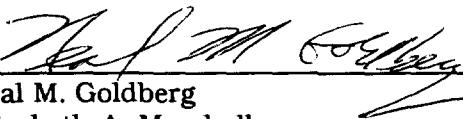
(i) Applications filed by cable television companies, or affiliates, for MDS channels prior to February 8, 1990, will not be subject to the prohibitions of this section. Except as provided in subsection (ii) below, applications filed on February 8, 1990, or thereafter will be returned. Lease arrangements between cable and MDS entities for which a lease or a firm agreement was signed prior to February 8, 1990, will also not be subject to the prohibitions of this section. Except as provided in subsection (ii) below, leases between cable television companies, or affiliates, and MDS/MMDS station licensees, conditional licensees, or applicants executed on February 8, 1990, or thereafter, are invalid.

(ii) Applications filed by cable television companies, or affiliates, for MDS channels prior to October 5, 1992, will not be subject to the prohibitions of this section, if, pursuant to the then-existing overbuild or rural exception, the applications were exempt when filed from the then-existing cable/MMDS cross-ownership prohibitions. Lease arrangements between cable and MDS entities for which a lease or a firm agreement was signed prior to October 5, 1992, will not be subject to the prohibitions of this section, if, pursuant to the then-existing overbuild or rural exception, the lease arrangements were exempt when signed from the then-existing cable/MMDS cross-ownership prohibitions.

CONCLUSION

For the reasons stated above, Oklahoma Western urges the Commission to reconsider and revise the cable/MMDS cross-ownership grandfathering provisions adopted in the Report and Order.

Respectfully submitted,


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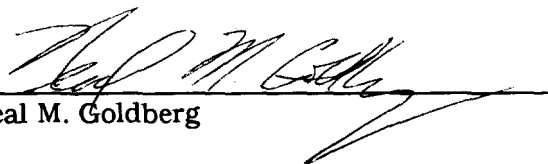
July 29, 1993

CERTIFICATE OF SERVICE

I, Neal M. Goldberg, certify that I have this 29th day of July, 1993, sent by first-class United States mail, postage prepaid, a copy of the foregoing "Petition for Clarification or Reconsideration" to:

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